

Memorandum

Date : December 10, 2001

Telephone: (916) 651-8836

To : Robert Pernell, Commissioner and Committee Presiding Member File: [Potrero_SR9.doc](#)
William J. Keese, Chariman and Committee Associate Member

From : [California Energy Commission](#) - Marc Pryor
1516 Ninth Street Project Manager
Sacramento, CA 95814-5512

Subject : **POTRERO POWER PLANT UNIT 7 PROJECT (00-AFC-4) STATUS REPORT NO. 9**

Correction: In the last status report, staff misstated that the it will require a new draft National Pollution Discharge Elimination System (NPDES) permit in order to complete and issue the FSA. Staff does not require either the draft nor the final NPDES permit in order to proceed with its FSA. The San Francisco Regional Water Quality Control Board (SFRWQCB) has indicated that it may not issue the NPDES permit until the Energy Commission completes the siting process for the proposed Unit 7 project.

ISSUES

BIOLOGICAL RESOURCES

ENDANGERED SPECIES ACT, SECTION 7 CONSULTATION

Both the California Department of Fish and Game (CDFG) and National Marine Fisheries Service (NMFS) continue to have concerns regarding thermal impacts of the cooling water system on aquatic species. The latter's concerns about salmonid species may result in the need for formal Section 7 consultation and a Biological Opinion. Preparation of a Biological Opinion may take many months to complete, and staff will not have a draft Biological Opinion prior to issuing its FSA. Because of this, staff has informed NMFS that its representatives would need to be present during the hearings to provide a clear understanding of the direction and progress of the Biological Opinion, if one is needed.

NEW CLEAN WATER ACT, SECTION 316(B) REGULATIONS

On November 9, 2001, the USEPA administrator signed a final rule pursuant to Section 316(b) of the Clean Water Act. The final rule will be effective 30 days after it is published in the Federal Register, which staff expects to occur shortly. On November 29, 2001, USEPA's San Francisco office sent a letter to the applicant informing it that the proposed plant is both a "new facility" and a "new source" under the rule. The first step the applicant must take is to file a new National Pollution Discharge Elimination

System (NPDES) permit with the SFRWQCB. A copy of the letter has been docketed and included with this memo. The rule revision may result in USEPA and/or the SFRWQCB determining that the applicant cannot use once through cooling based on the results of the new NPDES permit review.

TRANSMISSION LINE TO THE HUNTERS POINT SUBSTATION

The applicant has not provided a change to the project description that 1) removes the proposed alignment from the project, and 2) that provides staff with information that assures staff that the Hetch-Hetchy alignment would be entirely removed from Energy Commission jurisdiction. Therefore, staff continues to evaluate the proposed project with the Hunters Point transmission line as a part of the project. This provides the added benefit that if the Hetch-Hetchy project should be delayed, the applicant will not have to undergo analysis in an amendment should it choose to use the route specified in the AFC.

AGENCY COORDINATION

Staff continues to work with CDFG and NMFS representatives, as well as representatives of the U.S. Environmental Protection Agency (USEPA), the SFRWQCB, and the Bay Conservation and Development Commission (BCDC). These agencies are interested in alternatives to the proposed once-through cooling system, and CDFG, NMFS and USEPA are expected to provide the applicant with letters by December 12 that state their respective concerns and requirements.

The BCDC expects to provide its report on the project to the Energy Commission shortly after its meeting on February 27, 2002. As mentioned above, one of BCDC's primary concerns is the availability of an upland alternative to the proposed once-through cooling system, such as dry- or hybrid cooling.

STAFF'S COOLING ALTERNATIVES STUDY

Staff is continuing its study of power plant cooling options and expects to issue a draft this week to the applicant, intervenors and the agencies listed above. Comments will be requested to be provided within two weeks from the day the drafts are mailed to recipients to allow staff to address them in the FSA.

SCHEDULE

Staff expects to file its Final Staff Assessment (FSA) on January 25, 2002, which reflects the applicant's one week delay in docketing the Bay Area Air Quality Management District's (BAAQMD) Final Determination of Compliance (FDOC). The FDOC was docketed on December 7.

However, the completeness of the FSA will be dependent on whether the project will be permitted to use once-through cooling as currently proposed. If the project is not permitted to use once-through cooling based on the new 316(b) rules, the applicant will need to propose an alternate cooling technology that will need to be fully evaluated Energy Commission staff.

cc: Potrero Power Plant Unit 7 Project POS list (includes Bio AWG)
Docket



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

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Mark Harrer
Project Director
Mirant Potrero, LLC
1350 Treat Boulevard, Suite 500
Walnut Creek, California 94596

RE: Applicability of the New 316(b) Regulations to the Potrero Power Plant Unit 7 Project

Dear Mr. Harrer:

On November 9, EPA's Administrator signed a final rule pursuant to 316(b) of the Clean Water Act addressing entrainment and impingement impacts from cooling water intake structures for new facilities. The final rule is expected to be published in the Federal Register very soon, and will become effective 30 days after publication. The purpose of this letter is to inform you that under this new rule, the Potrero Power Plant Unit 7 Project (Project) will be considered a new facility, and will be covered by these regulations. Therefore, prior to the issuance of the National Pollutant Discharge Elimination System (NPDES) permit by the California Regional Board, San Francisco Bay Region, Mirant Potrero will need to submit additional information as part of the permit application as required under the new rule.

Under the new rule, a facility is defined as a "new facility" subject to the rule, if the following three conditions are met:

- (1) The facility meets the definition of a "new source" or "new discharger" in 40 CFR 122.2, and 40 CFR 122.29 (b)(1), (2), and (4); and
- (2) Construction commences after the effective date of the final rule (30 days after publication in the Federal Register); and
- (3) Facility has a new or modified cooling water intake structure that increases the existing design capacity.

Under 40 CFR 122.2, the Project meets the definition of "new source." 40 CFR 122.2 states:

"New source means any building, structure, facility, or installation from which there is or may be a 'discharge of pollutants' the construction of which commenced:

- (a) After promulgation of standards of performance under section 306 of the CWA which are applicable to such a source, or..."

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The steam electric power plant performance standards promulgated under section 306 of the Clean Water Act (CWA) apply to the Project. Therefore, the Project is a “new source” under 40 CFR 122.2.

Under 40 CFR 122.29 (b)(1)(iii), the regulation states that a facility is new source if it meets the “new source” definition under 40 CFR 122.2 and:

“...Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.”

Potrero Unit 7 as proposed is designed as a separate unit independent of the existing Unit 3. While they will share the same newly-designed intake structure, the two units can operate separately—they are not interdependent. Thus, EPA believes that the two units are “substantially independent” because Unit 7 will not be integrated with the existing Unit 3.

In conclusion, the proposed Unit 7 Project meets the new source definition under 40 CFR 122.2 and 122.29, will commence construction after the effective date of the rule, and will have a modified cooling water intake structure that increases the existing design capacity. Thus, the Unit 7 will be subject to the new regulation.

If you have any questions or concerns, please feel free to contact Terry Oda at (415) 972-3527 or Nancy Yoshikawa at (415) 972-3535.

Sincerely,

[Orig. signed by C. Kuhn for]
Alexis Strauss, Director
Water Division

cc: Judy Huang, Regional Board
Mike Rugg, CDFG
Becky Ota, CDFG
Brian Mulvey, NMFS
Joe Dillon, NMFS
Leslie Lacko, BCDC
Marc Pryor, CEC
Bill Westerfield, CEC